

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JM, through her next friend John Foley, and
JE, through her next friend Maria Fellin,
on her own behalf and on behalf of a class of
all other similarly-situated persons,**

Plaintiffs,

vs.

NO. CIV 07-0604 RB/ACT

**NEW MEXICO DEPARTMENT OF HEALTH,
et al.,**

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER came before the Court on Plaintiffs' Motion for Leave to File Second Amended Complaint, filed July 30, 2008. Jurisdiction arises under 28 U.S.C. § 1331. Having reviewed the submissions of the parties and the relevant law, Plaintiffs' Motion for Leave to File Second Amended Complaint is **GRANTED**.

I. Background.

This lawsuit was brought on behalf of Plaintiffs JM and JE, former residents of state institutions for persons with developmental disabilities, and a putative class of all other similarly-situated persons. Plaintiffs allege that JM, JE, and members of the putative class were improperly discharged from state institutions for persons with developmental disabilities and illegally placed in a variety of settings, where they suffered abuse, neglect, and deprivation of the care and services they required. The Plaintiffs and members of the putative class seek injunctive and declaratory relief to remedy the alleged failures of the State of New Mexico to protect and care for them. The Plaintiffs JM and JE individually seek damages to compensate

them for the injuries and deprivations they allegedly suffered as a result of Defendants' allegedly illegal conduct.

This action was originally commenced on April 6, 2007 in New Mexico State Court. An Amended Complaint was filed by Plaintiffs on May 21, 2007 in the State Court. On June 21, 2007, Defendants removed this action to the United States District Court, pursuant to 42 U.S.C. § 1331 and 28 U.S.C. § 1367. Plaintiffs filed their Motion for Leave to File Second Amended Complaint on July 20, 2008. Defendants New Mexico Department of Health, Los Lunas Center for Persons with Developmental Disabilities, Dan Sandoval, Roger Adams, Joseph Mateju, Michelle Lujan-Grisham, Steve Dossey, Deborah Armstrong, and Does 1-10 are not opposed to the filing by Plaintiffs of their proposed Second Amended Complaint, as Plaintiffs appropriately filed their motion with the Court in conformity with the Court's scheduling deadline for Plaintiffs to add parties or amend pleadings. Defendant Beth Schafer, who believes her pending motion to dismiss would be prejudiced by the proposed amendments, opposes Plaintiffs' motion to amend.

II. Discussion.

Pursuant to Rule 15(a), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed.R.Civ.P. 15(a). The purpose of Rule 15 is to provide litigants "the maximum opportunity for each claim to be decided on its merits rather than on procedural niceties." *Hardin v. Manitowoc-Forsythe Corp.*, 691 F.2d 449, 456 (10th Cir. 1982). This Court may deny leave to amend upon a showing of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of

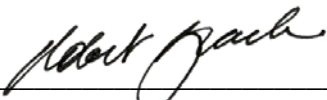
amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Plaintiffs' Motion for Leave to File Second Amended Complaint is timely, not futile, and does not unduly prejudice any of the Defendants. The Court, therefore, freely grants leave for Plaintiffs to file their Second Amended Complaint.¹

III. Conclusion.

Plaintiffs' Motion for Leave to File Second Amended Complaint is timely and well-taken.

WHEREFORE,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to File Second Amended Complaint is **GRANTED**.



ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE

¹To the extent necessary, the Court grants the parties leave—in accordance with a schedule that will be set forth by Judge Torgerson—to amend or supplement arguments put forward in support or opposition to pending motions impacted by the amendments to Plaintiffs' Complaint. The parties are instructed to file a Notice of Completion when supplemental briefing, if any, has been completed and the pending motion is ready for a decision by this Court.